

NO. 42012-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

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STATE OF WASHINGTON, Respondent

v.

LESTER JUAN GRIFFIN, Petitioner

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FROM THE SUPERIOR COURT FOR CLARK COUNTY  
CLARK COUNTY SUPERIOR COURT CAUSE NO. 08-1-00814-2

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RESPONSE TO PERSONAL RESTRAINT PETITION

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A. IDENTITY OF RESPONDENT AND AUTHORITY FOR RESTRAINT

The State of Washington is the Respondent in this matter.

Petitioner is restrained by authority of the judgment and sentence of the Clark County Superior Court under cause number 08-1-00814-2. A copy of the judgment and sentence is attached to this petition as Appendix A.

B. STATEMENT OF THE CASE

Petitioner Lester Griffin's case became final on December 13, 2010. He filed a personal restraint petition, pro se, on June 14, 2011. Through counsel, he withdrew that petition on December 7, 2011 and substituted the amended petition he filed that same day. See Appendix B. On that same day, he also filed a motion to stay this Court's consideration of his petition pending DNA testing that he claimed he would seek via motion in Clark County Superior Court. See Appendix C. The motion to stay was granted by the commissioner of this Court on December 16, 2011. See Appendix D. No motion for DNA testing was ever filed in the Superior Court. On June 7, 2012, Petitioner moved to lift the stay and to have this Court set a "briefing schedule." This Court granted the motion to lift the stay in a ruling dated June 12, 2012.

At this point in the proceedings the State became confused, and that confusion persists. Here is the reason for the confusion: The ruling dated June 7 says:

Petitioner has moved to lift the stay in this case and for permission to file a *supplemental petition*. Petitioner's motions are granted. Petitioner should, however, be aware that the issues in the supplemental *brief* may be subject to the one-year time bar stated in RCW 10.73.090 if petitioner did not raise these same issues in a previous, timely petition.

See Appendix E. Emphasis added, internal citation omitted.

As the State reads Petitioner's June 7, 2012 filing, Petitioner sought only to file a brief in support of his petition pursuant to RAP 16.10, not an amended or "supplemental" petition. Such a brief, indeed, is merely optional (and in this case is untimely because it must be filed with the petition). See RAP 16.10. The petition itself, which was filed on December 7, 2011, is governed by RAP 16.7. Under RAP 16.7(2)(i), a petition for relief from personal restraint must state the grounds for relief. This means that it must state "the facts upon which the claim of unlawful restraint is based and the evidence available to support the factual allegations." Petitioner contributes to this confusion by filing a brief that appears to raise an issue not raised in his petition (a claim of Brady violation) and by setting forth grounds for relief that do not match up with the grounds for relief stated in the petition. A brief serves as an amended

petition when it adds a claim not raised in the original petition. *In re Pers. Restraint of Wilson*, 169 Wn.App. 379, 393, 279 P.3d 990 (2012).

However, Petitioner evidently agrees that this “brief” is not a supplemental petition because he states in the “Grounds for Relief” section that “[t]he grounds for relief have been stated in the personal restraint petition filed on December [7], 2011.” See Brief at 1. Petitioner cannot have it both ways.

Griffin’s timely petition filed December 7, 2011 did not comply with RAP 16.7(2)(i). It did not state *any* facts, nor did it state the evidence available to support the factual allegations. On its face, it was a petition that the State could not have responded to with anything but a motion to dismiss. What occurred here is that Griffin filed a placeholder petition, seeking to stop the time bar without complying with Title 16 of the Rules of Appellate Procedure. He then obtained a stay of this Court’s consideration of that placeholder petition—a stay he desperately needed because if this Court considered the December 7<sup>th</sup> petition as written it would have been forced to dismiss it because it contained *no facts or evidence*—by claiming that he planned on seeking DNA testing. He never filed such a motion, but some eight months after filing his placeholder, non-compliant petition he filed a forty-four page “Brief in support Amended Personal Restraint Petition,” and attached 297 pages of exhibits.

It is only in this “brief” that we finally are shown the facts on which the claim is based and the evidence supposedly available to support the factual allegations.

The State, therefore, offers two alternative arguments. First, the “brief in support of the amended petition” filed August 13, 2012 was just that—a brief, governed by RAP 16.10. The only “petition” before this Court is the amended petition filed December 7, 2011. This petition must be dismissed because it does not contain any facts upon which the claim is based, nor does it identify the evidence available to support the factual allegations. Moreover, the brief should be stricken because under RAP 16.10(a), the brief in support of the petition must be filed at the time the petition is filed. Alternatively, if the “brief in support of the amended petition” filed August 13, 2012 is actually an *amended* petition, or a supplemental petition, it cannot relate back to the amended petition filed December 7, 2011 in an effort to make time-barred issues timely. Because it is filed more than one year after his case became final and is not based *solely* on one of the exceptions listed in RCW 10.73.100, the entire petition must be dismissed.

C. ARGUMENT WHY PETITION SHOULD BE DISMISSED

No petition collaterally attacking a judgment and sentence may be filed more than one year after the judgment and sentence becomes final, if

the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction. RCW 10.73.090(1); *In re Runyan*, 121 Wn.2d 432, 444, 853 P.2d 424 (1993). A judgment becomes final on the date that an appellate court issues its mandate disposing of a timely direct appeal from that conviction. RCW 10.73.090(3)(b). As noted above, Griffin's judgment became final on December 13, 2010.

In a personal restraint petition, petitioner bears the burden of showing prejudicial error. *State v. Brune*, 45 Wn.App. 354, 363, 725 P.2d 454 (1986); *In re Pers. Restraint of Monschke*, 160 Wn.App. 479, 489, 251 P.3d 884 (2010). Bare allegations unsupported to citation to authority, references to the record, or persuasive reasoning cannot sustain this burden of proof. *Brune* at 363. The petitioner must support the petition with the facts upon which the claim of unlawful restraint, and he may not rely solely on conclusory allegations. *Monschke*, supra, at 488; *In re Personal Restraint of Cook*, 114 Wn.2d 802, 813-14, 792 P.2d 506 (1990); RAP 16.7(a)(2) (i). When the allegations are based on matters outside the existing record, the petitioner must demonstrate that he has competent, admissible evidence to establish the facts that entitle him to relief. *Monschke* at 488; *In re Pers. Restraint of Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992). If the petitioner fails to make this threshold showing then he cannot bear his burden of showing prejudicial error. *Monschke*,



supra, at 489. RAP 16.10(a) provides that a petitioner may file an opening brief, “which should be filed with the petition.”

In this case, a petition which contained only bare allegations of error was filed just six days prior to the expiration of the one year following issuance of the mandate. The petition contained no facts, no reference to evidence to support the claims (with the sole exception of the fourth ground, which makes reference to photographs which were used at trial – this issue was abandoned in the “brief”), no citation to the record, no citation to authority, and no persuasive reasoning. An opening brief was not timely filed with the petition as required by RAP 16.10(a). The petition was not sufficient to meet the standard stated in *Brune* and *Monschke*, supra, until an opening brief was filed eight months later, more than one year after the judgment became final. It was an obvious placeholder petition meant to thwart the time-bar. This Court should conclude that Griffin’s petition does not meet the requirements of RAP 16.7 or the cases cited above and dismiss the petition as time-barred. Otherwise, this Court is allowing Griffin to flout the one-year time bar on collateral attacks dictated by the legislature. Under RCW 10.73.090 the time limit for collateral attack on this criminal judgment and sentence was December 13, 2011, one year after the judgment became final. See *In re Pers. Restraint of Bonds*, 165 Wn.2d 135, 140, 196 P.3d 672 (2008).

“RCW 10.73.090 is a mandatory rule that acts as a bar to appellate court consideration of PRPs filed after the limitation period has passed, unless the petitioner demonstrates that the petition is based on one of the exemptions enumerated in RCW 10.73.100.” *Id.* Collateral relief through a PRP is limited “because it undermines the principles of finality of litigation, degrades the prominence of trial, and sometimes deprives society of the right to punish admitted offenders.” *In re Pers. Restraint of Davis*, 152 Wn.2d 647, 670, 101 P.3d 1 (2004). Moreover, a tardy amended petition cannot relate back to a timely filed petition. *In re Pers. Restraint of Benn*, 134 Wn.2d 868, 938-39, 952 P.2d 116 (1998).

RCW 10.73.100 provides six exceptions to the one-year time bar. The statute states that the time limit “does not apply to a petition or motion that is based **solely** on one or more of the following grounds.” and enumerates six grounds. In *In re Stoudmire*, 141 Wn.2d 342, 5 P.3d 1240 (2000), the Court gave effect to the legislature’s use of the term “solely,” concluding that in order for a petition to be exempt from the one-year time limit (assuming that the judgment and sentence is valid on its face and rendered by a court of competent jurisdiction) all grounds for relief that are asserted must fall within the exceptions set forth in RCW 10.73.100. A claim of ineffective assistance of counsel does not fall within these exceptions, for example.

Griffin raises six grounds for relief, none of which falls within the exceptions listed in RCW 10.73.100. As such, the petition must be dismissed. Even if one of the grounds raised falls within the exceptions listed in RCW 10.73.100, that would not help Griffin because *all* of the grounds (with the exception of those which would render a judgment and sentence facially invalid) must fall within the exceptions listed in RCW 10.73.100 or else the petition is a mixed petition, requiring dismissal.

D. CONCLUSION


Griffin's petition does not raise any ground for relief because it does not contain any facts or evidence supporting his claims of error. If his brief is deemed an amended petition, it is time barred. His collateral attack must be dismissed.

DATED this 11<sup>th</sup> day of November, 2012.

Respectfully submitted:

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Clark County, Washington

By:

  
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Deputy Prosecuting Attorney

## APPENDIX A

14C

Robert Vukanovich

FILED

S9

FEB 18 2009

Sherry W. Parker, Clerk, Clark Co.

Superior Court of Washington  
County of Clark

State of Washington, Plaintiff,

vs.

LESTER JUAN GRIFFIN,  
Defendant.

SID: WA19726571

If no SID, use DOB: 2/15/1982

✓ 09-9-01259-7  
No. 08-1-00814-2

**Felony Judgment and Sentence (FJS)**

☒ Prison ☐ RCW 9.94A.712 Prison Confinement  
☐ Clerk's Action Required, para 4.5 (SDOSA),  
4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8

**I. Hearing**

1.1 The court conducted a sentencing hearing this date; the defendant, the defendant's lawyer, and the (deputy) prosecuting attorney were present.

**II. Findings**

There being no reason why judgment should not be pronounced, in accordance with the proceedings in this case, the court ***Finds:***

**2.1 Current Offenses:** The defendant is guilty of the following offenses, based upon

☐ guilty plea ☒ jury-verdict ☐ bench trial:

Count	Crime	RCW	Date of Crime
02	ATTEMPTED BURGLARY IN THE FIRST DEGREE	9A.08.020(3)/9A. 52.020/9A.52.02 0(1)(a)	5/17/2008
03	ASSAULT IN THE FIRST DEGREE	9A.08.020(3)/9A. 36.011/9A.36.01 1(1)(a)	5/17/2008

(If the crime is a drug offense, include the type of drug in the second column.)

☐ Additional current offenses are attached in Appendix 2.1.

The jury returned a special verdict or the court made a special finding with regard to the following:

☐ The defendant is a sex offender subject to indeterminate sentencing under **RCW 9.94A.712**.

☐ The defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage a victim of child rape or child molestation in sexual conduct in return for a fee in the commission of the offense in Count \_\_\_\_\_.  
RCW 9.94A.\_\_\_\_.

☐ The offense was predatory as to Count \_\_\_\_\_. RCW 9.94A.836.

☐ The victim was under 15 years of age at the time of the offense in Count \_\_\_\_\_. RCW 9.94A.837.

**Felony Judgment and Sentence (FJS)(Prison)**  
(RCW 9.94A.500, .505)(WPF CR 84.0400 (7/2007))

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- ☐ The victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense in Count \_\_\_\_\_. RCW 9.94A.838, 9A.44.010.
- ☐ The defendant acted with **sexual motivation** in committing the offense in Count \_\_\_\_\_. RCW 9.94A.835.
- ☐ This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- ☒ The defendant used a **firearm** in the commission of the offense in Count 03. RCW 9.94A.602, 9.94A.533.
- ☐ The defendant used a **deadly weapon other than a firearm** in committing the offense in Count \_\_\_\_\_. RCW 9.94A.602, 9.94A.533.
- ☐ Count \_\_\_\_\_, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- ☐ The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** in Count \_\_\_\_\_. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- ☐ The defendant committed ☐ **vehicular homicide** ☐ **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- ☐ The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- ☐ The crime(s) charged in Count \_\_\_\_\_ involve(s) **domestic violence**. RCW 10.99.020.
- ☐ Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- ☐ Additional misdemeanor crime(s) pertaining to this cause number are contained in a separate Judgment and Sentence.
- ☐ Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

## 2.2 Criminal History (RCW 9.94A.525):

<b>Crime</b>	<b>Date of Sentence</b>	<b>Sentencing Court (County &amp; State)</b>	<b>Date of Crime</b>	<b>A or J Adult, Juv.</b>	<b>Type of Crime</b>
See attached criminal history					

- ☒ Additional criminal history is attached in Appendix 2.2.
- ☐ The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.
- ☐ The following prior offenses require that the defendant be sentenced as a **Persistent Offender** (RCW 9.94A.570):
- ☐ The following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):
- ☐ The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

### 2.3 Sentencing Data:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term
02	15	VII-75%	27 MONTHS to 36 MONTHS	60 MONTHS	87 MONTHS to 96 MONTHS	10 YEARS \$20,000
03	4	XII	129 MONTHS to 171 MONTHS	60 MONTHS	189 MONTHS to 231 MONTHS	LIFE \$50,000

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9).

☐ Additional current offense sentencing data is attached in Appendix 2.3.

For violent offenses, most serious offenses, or armed offenders, recommended sentencing agreements or plea agreements are ☐ attached ☐ as follows: \_\_\_\_\_.

2.4 ☐ **Exceptional Sentence.** The court finds substantial and compelling reasons that justify an exceptional sentence:

☐ within ☐ below the standard range for Count(s) \_\_\_\_\_.

☐ above the standard range for Count(s) \_\_\_\_\_.

☐ The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

☐ Aggravating factors were ☐ stipulated by the defendant, ☐ found by the court after the defendant waived jury trial, ☐ found by jury, by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. ☐ Jury's special interrogatory is attached. The Prosecuting Attorney ☐ did ☐ did not recommend a similar sentence.

2.5 **Ability to Pay Legal Financial Obligations.** The court has considered the total amount owing, the defendant's past, present, and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

☐ The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753): \_\_\_\_\_.

### III. Judgment

3.1 The defendant is **Guilty** of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 ☒ The defendant is found **Not Guilty** of Counts 01 (ROBBERY IN THE FIRST DEGREE).

☐ The court **Dismisses** Counts \_\_\_\_\_.

### IV. Sentence and Order

**It is Ordered:**

4.1a The defendant shall pay to the clerk of this court:

Felony Judgment and Sentence (FJS)(Prison)  
(RCW 9.94A.500, .505)(WPF CR 84.0400 (7/2007))

JASS CODE

RTN/RJN

\$ 0.00 Restitution to

PCV \$ 500.00 Victim assessment RCW 7.68.035

\$ Domestic Violence assessment RCW 10.99.080

CRC \$ Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190

Criminal filing fee \$ 200.00 FRC

Witness costs \$ WFR

Sheriff service fees \$ SFR/SFS/SFW/WRF

Jury demand fee \$250.00 JFR

Extradition costs \$ EXT

Other \$

PUB \$ 1,000.00 Fees for court appointed attorney RCW 9.94A.760

\$ Trial per diem, if applicable

WFR \$ Court appointed defense expert and other defense costs RCW 9.94A.760

FCM/MTH \$ 500.00 Fine RCW 9A.20.021; ☐ VUCSA chapter 69.50 RCW, ☐ VUCSA additional fine deferred due to indigency RCW 69.50.430

CDF/LDI/PCD \$ Drug enforcement Fund # ☐ 1015 ☐ 1017 (TF) RCW 9.94A.760

NTF/SAD/SDI

CLF \$ Crime lab fee ☐ suspended due to indigency RCW 43.43.690

\$ 100.00 Felony DNA collection fee ☐ not imposed due to hardship RCW 43.43.7541

RTN/RJN \$ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum) RCW 38.52.430

\$ Other costs for: \_\_\_\_\_

\$ **Total** RCW 9.94A.760

☐ The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

☐ shall be set by the prosecutor.

☐ is scheduled for \_\_\_\_\_

☐ **Restitution** Schedule attached.

☐ Restitution ordered above shall be paid jointly and severally with:

**Name** of other defendant      **Cause Number**      (Victim's name)      (Amount-\$)

RJN

☐ The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

☐ All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets



forth the rate here: Not less than \$ \_\_\_\_\_ per month commencing \_\_\_\_\_.  
RCW 9.94A.760.

- ☐ The defendant shall report as directed by the Superior Court Clerk and provide financial information as requested. RCW 9.94A.760(7)(b). The defendant shall report in person no later than the close of business on the next working day after the date of sentencing or release from custody. A map has been provided to the defendant showing the location of the Superior Court Clerk Collections Unit at 500 West 8<sup>th</sup> Street, Suite 50, Vancouver, Washington. The defendant must report any changes in address and phone numbers to the Collections Unit within 72 hours of moving.
- ☐ The court finds that the defendant has the means to pay, in addition to the other costs imposed herein, for the cost of incarceration and the defendant is ordered to pay such costs at the rate of \$50 per day, unless another rate is specified here: \_\_\_\_\_. (JLR) RCW 9.94A.760.

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

**4.1b** ☐ **Electronic Monitoring Reimbursement.** The defendant is ordered to reimburse \_\_\_\_\_ (name of electronic monitoring agency) at \_\_\_\_\_, for the cost of pretrial electronic monitoring in the amount of \$ \_\_\_\_\_.

**4.2 DNA Testing.** The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

☐ **HIV Testing.** The defendant shall submit to HIV testing. RCW 70.24.340.

**4.3 No Contact:** The defendant shall not have contact with GARY LEE ATKINSON including, but not limited to, personal, verbal, telephonic, written or contact through a third party for Life years (not to exceed the maximum statutory sentence).

☐ Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

**4.4 Other:** \_\_\_\_\_

**4.5 Confinement Over One Year.** The court sentences the defendant to total confinement as follows:

- (a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

35 days/months on Count 02  
130 days/months on Count 03

☐ The confinement time on Count(s) \_\_\_\_\_ contain(s) a mandatory minimum term of \_\_\_\_\_.

☒ The confinement time on Count 2 + 3 includes 60 months as <sup>each</sup> enhancement for ☒ firearm ☐ deadly weapon ☐ sexual motivation ☐ VUCSA in a protected zone ☐ manufacture of methamphetamine with juvenile present ☐ sexual conduct with a child for a fee.

Actual number of months of total confinement ordered is: 285 Months

The combined total amount of confinement and Community Placement or Community Custody shall not exceed the statutory maximum. RCW 9.94A.505(5)

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: \_\_\_\_\_

The sentence herein shall run consecutively with the sentence in cause number(s) \_\_\_\_\_

in either District Court or Superior Court unless otherwise specified herein: \_\_\_\_\_

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

- (b) **Confinement.** RCW 9.94A.712 (Sex Offenses only): The court orders the following term of confinement in the custody of the DOC:

Count \_\_\_\_\_ minimum term \_\_\_\_\_ maximum term \_\_\_\_\_

- (c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served unless the credit for time served prior to sentencing is specifically set forth here by the court: 225 days

**4.6 Community Placement or Community Custody.** The court orders community placement or community custody as follows:

☐ **Community Placement:**

\_\_\_\_\_ days/months on Count \_\_\_\_\_

☐ **Community Custody** for count(s) \_\_\_\_\_, sentenced under RCW 9.94A.712, for any period of time the defendant is released from total confinement before the expiration of the maximum sentence.

☒ **Community Custody:**

Count 12 for a range from 18 to 36 months;

Count 23 for a Range of 24 to 48 Months

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Use paragraph 4.7 to impose community custody following work ethic camp.]

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories; or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

a) The defendant committed a current or prior:		
i) Sex offense	ii) Violent offense	iii) Crime against a person (RCW 9.94A.411)
iv) Domestic violence offense (RCW 10.99.020)		v) Residential burglary offense
vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine including its salts, isomers, and salts of isomers		
vii) Offense for delivery of a controlled substance to a minor; or attempt, solicitation or conspiracy (vi, vii)		
b) The conditions of community placement or community custody include chemical dependency treatment		
c) The defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745		

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) pay supervision fees as determined by DOC; (7) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (8) for sex offenses, submit to electronic monitoring if imposed by DOC; and (9) abide by any additional conditions imposed by DOC under RCW 9.94A.720. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

☐ The defendant shall not consume any alcohol.

☒ The defendant shall have no contact with: Gary Atkinson

☐ The defendant shall remain ☐ within ☐ outside of a specified geographical boundary, to wit:

☐ The defendant shall not reside within 880 feet of the facilities or grounds of a public or private school (community protection zone). RCW 9.94A.030(8).

☐ The defendant shall participate in the following crime-related treatment or counseling services:

☐ The defendant shall undergo an evaluation for treatment for ☐ domestic violence ☐ substance abuse  
☐ mental health ☐ anger management and fully comply with all recommended treatment.

☐ The defendant shall comply with the following crime-related prohibitions:

☐ Other conditions:

☐ For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

**4.7 ☐ Work Ethic Camp.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp. The court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

**4.8 Off - Limits Order.** (Known drug trafficker). RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections:

## V. Notices and Signatures

**5.1 Collateral Attack on Judgment.** If you wish to petition or move for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, you must do so within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

**5.2 Length of Supervision.** If you committed your offense prior to July 1, 2000, you shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the

date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

**5.3 Notice of Income-Withholding Action.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections (DOC) or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

**5.4 Restitution Hearing.**

☐ I waive any right to be present at any restitution hearing (sign initials): \_\_\_\_\_.

**5.5 Community Custody Violation.**

(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.634.

(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.737(2).

**5.6 Firearms.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

**Cross off or delete if not applicable:**

**5.7 Sex and Kidnapping Offender Registration.** RCW 9A.44.130, 10.01.200.

**1. General Applicability and Requirements:** Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

**2. Offenders Who Leave the State and Return:** If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.

**3. Change of Residence Within State and Leaving the State:** If you change your residence within a county, you must send signed written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send signed written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving and register with that sheriff within 24 hours of moving. You must also give signed written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington State, you must send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

**4. Additional Requirements Upon Moving to Another State:** If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

**5. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12):** If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination. If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. The sheriff shall promptly notify the principal of the school.

**6. Registration by a Person Who Does Not Have a Fixed Residence:** Even if you do not have a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody. Within 48 hours excluding weekends and holidays, after losing your fixed residence, you must send signed written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. You may be required to provide a list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

**7. Reporting Requirements for Persons Who Are Risk Level II or III:** If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, every 90 days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. If you comply with the 90-day reporting requirement with no violations for at least five years in the community, you may petition the superior court to be relieved of the duty to report every 90 days.

**8. Application for a Name Change:** If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within five days of the entry of the order. RCW 9A.44.130(7).

- 5.8 ☐ Count \_\_\_\_\_ is a felony in the commission of which you used a motor vehicle. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.
- 5.9 If you are or become subject to court-ordered mental health or chemical dependency treatment, you must notify DOC and you must release your treatment information to DOC for the duration of your incarceration and supervision. RCW 9.94A.562.

### 5.10 Persistent Offense Notice

☒ The crime(s) in count(s) 02, 03 is/are "most serious offense(s)." Upon a third conviction a most "serious offense", the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.030 (28 & 32(a)), 9.94A.505.

☐ The crime(s) in count(s) \_\_\_\_\_ is/are one of the listed offenses in RCW 9.94A.030(32)(b). Upon a second conviction of one of these listed offenses, the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody.

**Done** in Open Court and in the presence of the defendant this date: 2-18-09

Deputy Prosecuting Attorney

WSBA No. 25172

Print Name: Anthony F. Golik

Attorney for Defendant

WSBA No. 28847

Print Name: Robert M Vukanovich

Judge/Print Name: R. A. Lewis

Defendant

Print Name:

LESTER JUAN GRIFFIN

**Voting Rights Statement:** I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: refused

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the \_\_\_\_\_ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

Interpreter signature/Print name: \_\_\_\_\_

I, Sherry Parker, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

**Witness** my hand and seal of the said Superior Court affixed this date: \_\_\_\_\_

Clerk of the Court of said county and state, by: \_\_\_\_\_, Deputy Clerk

## Identification of the Defendant

LESTER JUAN GRIFFIN

SID No: WA19726571

Date of Birth: 2/15/1982

(If no SID take fingerprint card for State Patrol)

FBI No. 249079TB7

Local ID No. 159636

PCN No. \_\_\_\_\_

Other \_\_\_\_\_

Alias name, DOB:

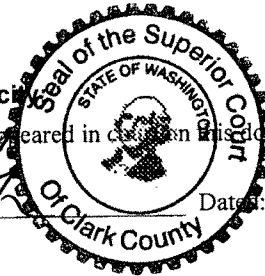
Race: B

Ethnicity

Sex: M

**Fingerprints:** I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto.

Clerk of the Court, Deputy Clerk, \_\_\_\_\_



Date: 2-18-09

The defendant's signature: *refused*

Left four fingers taken simultaneously

Left  
Thumb

Right  
Thumb

Right four fingers taken simultaneously



SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK	
STATE OF WASHINGTON, Plaintiff,	NO. 08-1-00814-2
v.	<b>WARRANT OF COMMITMENT TO STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</b>
LESTER JUAN GRIFFIN,	
Defendant.	
SID: WA19726571 DOB: 2/15/1982	

THE STATE OF WASHINGTON, to the Sheriff of Clark County, Washington, and the State of Washington, Department of Corrections, Officers in charge of correctional facilities of the State of Washington:

**GREETING:**

WHEREAS, the above-named defendant has been duly convicted in the Superior Court of the State of Washington of the County of Clark of the crime(s) of:

COUNT	CRIME	RCW	DATE OF CRIME
02	ATTEMPTED BURGLARY IN THE FIRST DEGREE	9A.08.020(3)/9A.52.020/9A.52.020(1)(a)	5/17/2008
03	ASSAULT IN THE FIRST DEGREE	9A.08.020(3)/9A.36.011/9A.36.011(1)(a)	5/17/2008

and Judgment has been pronounced and the defendant has been sentenced to a term of imprisonment in such correctional institution under the supervision of the State of Washington, Department of Corrections, as shall be designated by the State of Washington, Department of Corrections pursuant to RCW 72.13, all of which appears of record; a certified copy of said judgment being endorsed hereon and made a part hereof,

NOW, THIS IS TO COMMAND YOU, said Sheriff, to detain the defendant until called for by the transportation officers of the State of Washington, Department of Corrections, authorized to conduct defendant to the appropriate facility, and this is to command you, said Superintendent of the appropriate facility to receive defendant from said officers for confinement, classification and placement in such correctional facilities under the supervision of the State of Washington, Department of Corrections, for a term of confinement of :

COUNT	CRIME	TERM
02	ATTEMPTED BURGLARY IN THE FIRST DEGREE	95 Days/Months
03	ASSAULT IN THE FIRST DEGREE	190 Days/Months

*Total Sentence is 285 Months*



These terms shall be served concurrently to each other unless specified herein:

The defendant has credit for 275 days served.

The term(s) of confinement (sentence) imposed herein shall be served consecutively to any other term of confinement (sentence) which the defendant may be sentenced to under any other cause in either District Court or Superior Court unless otherwise specified herein:

And these presents shall be authority for the same.

HEREIN FAIL NOT.

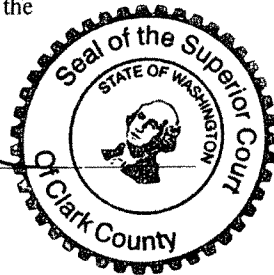
WITNESS, Honorable

JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE: 2/18/09

SHERRY W. PARKER, Clerk of the  
Clark County Superior Court

By:

Deputy



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,  
Plaintiff,  
v.  
LESTER JUAN GRIFFIN,  
Defendant

No. 08-1-00814-2

APPENDIX 2.2

DECLARATION OF CRIMINAL HISTORY

COME NOW the parties, and do hereby declare, pursuant to RCW 9.94A.100 that to the best of the knowledge of the defendant and his/her attorney, and the Prosecuting Attorney's Office, the defendant has the following undisputed prior criminal convictions:

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	PTS.
RESIDENTIAL BURGLARY	CLARK/WA 99-8-00653-0	7/23/1999	8/30/1999	<del>10</del> 10
BURGLARY 1	CLARK/WA 01-1-01406-4	5/7/2001	3/21/2002	2

☐ The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.

DATED this 18 day of February, 2009.

refused  
Defendant

\_\_\_\_\_  
Attorney for Defendant

Anthony F. Golik  
Anthony F. Golik, WSBA#25172  
Deputy Prosecuting Attorney

DECLARATION OF CRIMINAL HISTORY  
Revised 9/14/2000

CLARK COUNTY PROSECUTING ATTORNEY  
1013 FRANKLIN STREET • PO BOX 5000  
VANCOUVER, WASHINGTON 98666-5000  
(360) 397-2261 (OFFICE)  
(360) 397-2230 (FAX)

## APPENDIX B

RECEIVED  
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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

IN THE MATTER OF THE PERSONAL  
RESTRAINT OF:

LESTER JUAN GRIFFIN.

Petitioner.

No. 420121-II

MOTION FOR LEAVE TO  
FILE AMENDED PETITION  
AND BRIEF

**I. IDENTITY OF MOVING PARTY**

Petitioner Lester Juan Griffin, through his attorneys Jacqueline  
McMurtrie and Anna Tolin, of the Innocence Project Northwest Clinic, seeks  
the relief designated in Part II. below.

## II. RELIEF SOUGHT

Petitioner asks the Court to:

1. Substitute the amended petition, filed with this motion, for the pro se personal restraint petition and accompanying documents filed in this Court on June 14, 2011;
2. Allow Petitioner a reasonable amount of time to obtain additional DNA testing of the evidence and file an amended brief and appendices in support of the amended petition, as specified in the Motion to Stay and Abey filed with this Motion; and
3. Allow the State an appropriate amount of time, pursuant to RAP 16.10, to respond to the amended petition and brief, after Petitioner's amended brief and appendices in support of the petition is filed.

## III. FACTS RELEVANT TO MOTION

Jacqueline McMurtrie certifies as follows:

1. I am a licensed attorney in the state of Washington. I direct the Innocence Project Northwest (IPNW) Clinic at the University of Washington School of Law. The IPNW Clinic investigates and litigates claims on behalf of prisoners incarcerated in Washington State.
2. I am familiar with the files and records of In re the Personal Restraint of Lester Juan Griffin, Court of Appeals No. 420121-II, Clark County Case No. 08-1-00814-2.

1 3. Mr. Griffin filed a pro se personal restraint petition and  
2 accompanying documents in this Court on June 14, 2011 under  
3 the above cause number.

4 4. Mr. Griffin also contacted the IPNW Clinic for assistance with  
5 his case. In mid-November, 2011, law students David Rubinstein  
6 and Eric Mapes were assigned to investigate Mr. Griffin's claim  
7 that he was not involved in the crime for which he was convicted.  
8 This investigation brought to light significant exculpatory  
9 evidence corroborating Mr. Griffin's account of the events, which  
10 we will explain in detail in the amended brief. It was also  
11 brought to light that DNA tests on the shell casings recovered  
12 from the crime scene could demonstrate Mr. Griffin's innocence  
13 on a more-probable-than-not basis. See Motion to Stay and  
14 Abey, filed with this Motion. DNA tests were never performed  
15 on the shell casings. Id.

16 5. The investigation also revealed that Clark County Prosecutors did  
17 not disclose to Mr. Griffin's trial attorney, Robert M.  
18 Vukanovich, information known to them that casts significant  
19 doubt on the credibility of former Vancouver Police Officer  
20 Jeffrey Wilken, the lead investigator in the case and one of the  
21 main witnesses against Mr. Griffin at trial. Specifically, the  
22 Clark County Prosecutor's office had, on July 26, 2000, filed a  
23 formal complaint against Mr. Wilken for making materially false  
24  
25

1 statements under oath in Clark County Superior Court on May  
2 19, 2000.

3 6. After obtaining this information, we contacted Mr. Griffin and  
4 advised him that the IPNW Clinic was willing to represent him in  
5 his post-conviction proceedings.

6 7. I spoke with Mr. Griffin on November 16, 2011, November 23,  
7 2011 and December 5, 2011. We talked about the IPNW Clinic  
8 acting as his attorney. I explained that we would file an amended  
9 petition and brief and ask this Court to substitute the amended  
10 petition and brief for the pro se petition and accompanying brief.  
11 I told him we would not be proceeding on all the claims raised in  
12 his pro se writ of habeas corpus. We discussed the claims we  
13 would raise in the amended petition and brief.

14 8. Mr. Griffin agreed to have the IPNW Clinic act as his counsel in  
15 these proceedings. He agrees with this motion for leave to file  
16 the amended petition and brief and substitute it for the pro se  
17 petition filed in this Court. We will file a Verification of the  
18 amended petition as required in RAP 16.7(a)(6).

19 9. The mandate in Mr. Griffin's direct appeal was filed on  
20 December 10, 2010. The amended petition is filed within the  
21 one-year filing deadline of 10.73.090(3)(b).

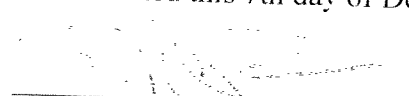
22 10. Mr. Griffin's pro se personal restraint petition raised eight  
23 grounds for relief. Counsel for Mr. Griffin have modified the  
24 claims in the amended petition. The claims in the amended  
25

1 petition are similar in nature to grounds raised in the pro se  
2 petition.

3 11. On November 10, 2011, we contacted Anne Cruser and Jennifer  
4 Casey, counsel for the State, and advised them we were  
5 considering filing the amended petition. The State filed a motion  
6 to extend the time to file a response the same day. The State's  
7 response to the pro se petition is currently due on December 16,  
8 2011. We request that the State be given an appropriate amount  
9 of time, pursuant to RAP 16.10, to respond to the amended  
10 petition and brief, after Petitioner's amended brief and  
11 appendices in support of the petition is filed.

12  
13 I declare under the penalty of perjury under the laws of the State of  
14 Washington that the foregoing is true and correct.

15 Dated this 7th day of December, 2011 at Seattle, Washington.

16  
17   
Jacqueline McMurtrie, WSBA # 13587

18 **IV. GROUNDS FOR RELIEF AND ARGUMENT**

19 Mr. Griffin seeks leave to file an amended personal restraint petition and  
20 requests time to file an amended brief and appendix prepared by counsel. He  
21 asks that the amended personal restraint petition substitute for his pro se  
22 personal restraint petition and accompanying documents. Mr. Griffin's  
23 amendment is timely filed. His conviction became final on December 10, 2010,  
24 when this Court filed a mandate disposing of his direct appeal. RCW  
25



1 10.73.090(c)(3). He is filing the amendment within the one-year statute of  
2 limitations. Id. None of the claims in the amendment are time-barred. RCW  
3 10.73.090. RCW 10.73.090.100. Mr. Griffin is filing his amendment before the  
4 State has filed its response to his pro se petition. He asks the Court to stay and  
5 abey this matter to allow time for scientific tests to be performed, and for the  
6 results of that testing and counsel's investigation to be incorporated into an  
7 amended brief in support of the amended petition, as detailed in the Motion to  
8 Stay and Abey filed with this Motion. He also asks that the Court grant an  
9 extension of time to the State to file a response to his amended petition after the  
10 amended brief and appendix are filed by counsel. Therefore, there is no  
11 prejudice to the State by allowing the amendment.  
12

13 RAP 16.10 permits the court to allow additional briefing at any time.  
14 The court rules are interpreted liberally. RAP 1.2(a), (c). There is no inherent  
15 unfairness to the State when the petitioner timely files a collateral attack and  
16 asks to file an amendment to the petition within the one-year statute of  
17 limitation. This is especially true when the State has not yet responded to the  
18 initial petition.

19 Mr. Griffin is filing his amendment within the one-year statute of  
20 limitations, shortly after retaining pro bono counsel. The claims in the  
21 amendment are similar to those raised by Mr. Griffin in his pro se personal  
22 restraint petition. However, the Court's consideration of Mr. Griffin's claims  
23 will benefit from the presence of counsel who are better able than is an  
24  
25


1 incarcerated petitioner to research legal claims and locate evidence to support  
2 them.

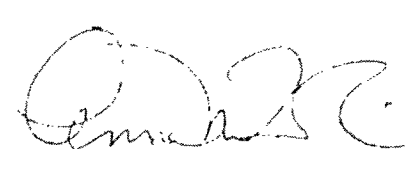
3 For the foregoing reasons, Mr. Griffin respectfully requests leave to file  
4 the amended petition filed with this motion and requests that it be substituted for  
5 the pro se personal restraint petition and accompanying documents filed in this  
6 Court. He also requests that this matter be stayed in order for his counsel to  
7 obtain further testing of physical evidence and incorporate the results in an  
8 amended brief, as specified in the Motion to Stay and Abey filed with this  
9 motion, and that the State be given an appropriate extension of time to respond  
10 after the amended brief and appendix are filed by counsel.  
11

12 DATED this 7th day of December, 2011.

13 Respectfully Submitted,

14 INNOCENCE PROJECT NW CLINIC

15  
16   
17 \_\_\_\_\_  
18 Jacqueline McMurtrie, WSBA # 13587  
19 Attorney for Petitioner Griffin  
20 Innocence Project NW Clinic  
21 Univ. of WA School of Law  
22 P.O. Box 85110  
23 Seattle, WA 98145-1110  
24 (206) 543-5780  
25 Email: jackiem@uw.edu

  
\_\_\_\_\_  
Anna Tolin, WSBA # 22071  
Attorney for Petitioner Griffin  
Innocence Project NW Clinic  
Univ. of WA School of Law  
P.O. Box 85110  
Seattle, WA 98145-1110  
(206) 221-8411  
Email: atolin@uw.edu

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**CERTIFICATE OF SERVICE**

I certify that on the date listed below, I served by United States Mail, first-class postage, one copy of this Motion for Leave to File Amended Petition and Brief on the following:

Ms. Anne Cruser, Deputy Prosecuting Attorney  
Office of the Clark County Prosecuting Attorney, Appellate Division  
1013 Franklin Center  
P.O. Box 5000  
Vancouver WA 98666-5000

Mr. Lester Juan Griffin, #838731  
H5-B108  
Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, WA 98520

\_\_\_\_\_  
Date and Place Cynthia S. Fester

## APPENDIX C

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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

IN THE MATTER OF THE PERSONAL RESTRAINT OF:  LESTER JUAN GRIFFIN.  Petitioner.	No. 420121-II  MOTION TO STAY AND ABEY PERSONAL RESTRAINT PETITION
---	--

**I. IDENTITY OF MOVING PARTY**

Petitioner Lester Griffin, through his attorneys Jacqueline McMurtrie  
and Anna Tolin of the Innocence Project Northwest (IPNW) Clinic, seeks the  
relief designated in Part II, below.

## II. RELIEF SOUGHT

Lester Griffin, through his attorneys, Jacqueline McMurtrie and Anna Tolin of the IPNW Clinic, filed an amended personal restraint petition simultaneously with this motion, which he requests be viewed as a "protective" petition. He further asks the Court to stay his petition and hold it in abeyance pending the conclusion of the proceedings related to his motion for post-conviction DNA testing under RCW 10.73.170, because DNA results will have a substantial impact upon his personal restraint petition. If the Clark County Superior Court grants his request for DNA testing of physical evidence from the shooting for which Mr. Griffin was convicted, the results will support the claims raised in Mr. Griffin's "protective" petition. Conversely, in the unlikely event that Mr. Griffin's DNA profile is found on other evidence found at the crime scene, the claims raised in his "protective" petition would be negatively impacted.

Mr. Griffin agrees that it would be reasonable for him to keep the Court apprised of the status of his post-conviction DNA proceedings in order for the Court to determine when the personal restraint petition proceedings should be resumed.

## III. FACTS RELEVANT TO MOTION

Lester Griffin is serving a sentence of 285 months for first degree assault with a deadly weapon and attempted first degree burglary, crimes he insists he did not commit. *State v. Griffin*, 157 Wn. App. 1001, 2010 WL 2836703, at \*1 (2010); RP 528-29. Biological evidence in the possession of

1 the Vancouver Police Department and the Clark County Superior Court Clerk  
2 in Vancouver could exonerate Mr. Griffin if subjected to post-conviction DNA  
3 analysis. RP 164-65. Accordingly, Mr. Griffin will file a motion for post-  
4 conviction DNA testing, pursuant to RCW 10.73.170 in the Clark County  
5 Superior Court by February 29, 2012.

6 The incident for which Mr. Griffin was convicted occurred the night of  
7 May 17, 2008. RP 95. Two men pounded on the door to the home of Gary L.  
8 Atkinson, the victim, and forced their way into the house when he refused.  
9 Atkinson testified that both men were wearing blue-and-white bandanas over  
10 their faces. RP 95-96. Each holding a pistol, they ordered Mr. Atkinson to the  
11 floor. RP 100. Atkinson then attempted to run out of his house toward a  
12 neighbor's, and was shot once in the back as he fled, another bullet missing  
13 him. RP 107-108. After Atkinson arrived at his neighbor's house, the  
14 neighbor, Ronald Albertson, saw two people moving away from Atkinson's  
15 house. RP 147-50.

16 Atkinson positively identified Garry Alexander as one of his assailants,  
17 testifying at trial that he had met Alexander several times in the past, including  
18 in Atkinson's home, and that he recognized a tear-drop tattoo on Alexander's  
19 face. RP 102, 110-14. However, as a cooperating witness for the State,  
20 Alexander testified that he did not participate in the crime, but that Griffin had.  
21 RP 260-64. Alexander received a reduced sentence for his cooperation. RP  
22 285-86.

23 Police recovered two shell casings at the scene that were never tested  
24 for DNA evidence. RP 164-65, 355-372. Law enforcement recognized the  
25

1 significant evidentiary value of these items and had them dusted for  
2 fingerprints. RP 168. DNA results that show an individual other than Mr.  
3 Griffin loaded the weapon used to shoot Mr. Atkinson would refute the state's  
4 theory of the case and support Mr. Griffin's claim of innocence.

#### 5 **IV. GROUNDS FOR RELIEF AND ARGUMENT**

6 In order to preserve the constitutional claims raised in his "protective"  
7 petition, Mr. Griffin is obligated to file the petition within one year of  
8 December 10, 2010. RCW 10.73.090(1) prohibits collateral attacks against  
9 criminal judgments and sentences if not brought within one year after the  
10 judgment and sentence becomes final. *In re Pers. Restraint of LaChapelle*,  
11 153 Wn.2d 1, 6, 100 P.3d 805 (2004). Mr. Griffin's judgment and sentence  
12 became final on December 10, 2010, the date upon which this Court filed its  
13 mandate following his direct appeal. RCW 10.73.090(3)(b). He previously  
14 filed a Personal Restraint Petition on June 14, 2011, the amended version of  
15 which was filed simultaneously to this motion.  
16

17 In most instances, a petitioner would file an opening brief along with  
18 the petition. RAP 16.10 (a)(1). The appellate court would then serve the  
19 petition on the respondent and require the respondent to serve and file a  
20 response within 60 days after the petition is served, along with an answering  
21 brief. RAP 16.9: 16.10(b).<sup>1</sup> However, RAP 16.10 permits the court to allow  
22

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23  
24 <sup>1</sup> If an appellate court determines that the petition should be dismissed because it is time barred  
25 under RCW 10.73.090, or is barred as a successive petition under RCW 10.73.140, it can  
dismiss the petition without calling for a response. RAP 16.9.



1 additional briefing at any time. The court rules are interpreted liberally. RAP  
2 1.2(a), (c).

3 Mr. Griffin requests that the Court, pursuant to RAP 18.8, alter or  
4 waive the provisions of the rules and stay his petition and hold it in abeyance  
5 pending the conclusion of the Clark County Superior Court proceedings.  
6 Under RAP 18.8(a): "The appellate court may, on its own initiative, or on  
7 motion of a party, waive or alter the provisions of any of these rules and  
8 enlarge or shorten the time within which an act must be done in a particular  
9 case in order to serve the ends of justice . . . ."

10 Allowing Mr. Griffin's post-conviction DNA proceedings to go  
11 forward prior to the resolution of the personal restraint petition proceedings  
12 will "serve the ends of justice" by conserving judicial resources and allowing  
13 the Court to consider the petition after all the facts necessary to resolve the  
14 petition are before the appellate court. The motion for post-conviction DNA  
15 testing is not brought on the same grounds as the constitutional claims and the  
16 newly discovered evidence claim Mr. Griffin raises in his "protective"  
17 petition. However, the DNA results will have a substantial impact upon these  
18 claims, and upon his assertion that he is innocent of these charges.

20 There is a strong likelihood that the results of these tests will  
21 demonstrate Mr. Griffin's innocence on a more probable than not basis. It is  
22 possible to extract significant DNA evidence from a fingerprint. Jennifer J.  
23 Raymond, Claude Roux and Simon J. Walsh, *Friction Ridge Skin-Interaction*  
24 *Between Fingerprint Detection and DNA/Biological Material*, in Wiley  
25

1 Encyclopedia of Forensic Science [3] 1318 (A. Jaemison & Andre A.  
2 Mocnssens eds. 2009). Indeed, DNA has been extracted from cells left on  
3 shell casings in several jurisdictions, including: Washington, Carol Smith,  
4 DNA advance very good at getting its man, Seattle Post-Intelligencer, August  
5 16, 2001, available at [http://www.seattlepi.com/local/article/DNA-advance-](http://www.seattlepi.com/local/article/DNA-advance-very-good-at-getting-its-man-1062978.php)  
6 [very-good-at-getting-its-man-1062978.php](http://www.seattlepi.com/local/article/DNA-advance-very-good-at-getting-its-man-1062978.php); Arkansas, *Smith v. State*, No.  
7 CACR 09-972, 2010 WL 728067, at \*2 (Ark. App. Mar. 3, 2010); and Ohio,  
8 *State v. Bolan*, No. 95807, 2011-Ohio-4501, 2011 WL 3925584, at \*2 (Ohio  
9 App. Sept. 8, 2011). DNA testing is even possible where the item has been  
10 previously dusted for fingerprints. David E. O. Van Hoofstat, et al., *DNA*  
11 *Typing of Fingerprints Using Capillary Electrophoresis: Effect of*  
12 *Dactyloscopic Powders*, 20 Electrophoresis 2870, 2870-76 (1999). In the  
13 instant case DNA testing could provide critical evidence relevant to the  
14 pending petition.

15  
16 If the Clark County Superior Court grants his request for DNA testing,  
17 the exclusion of Mr. Griffin as a source for DNA on items to be tested will  
18 support Mr. Griffin's claim of innocence. Conversely, in the unlikely event  
19 that a DNA profile found on these items matches Mr. Griffin, the claims raised  
20 in his "protective" petition would be negatively impacted.

21 Federal courts allow petitioners to file a "protective" petition when  
22 ongoing state proceedings raise any type of question regarding the statutory  
23 tolling of the filing deadline for a federal habeas petition. *Pace v.*  
24 *DiGuglielmo*, 544 U.S. 408, 125 S. Ct. 1807, 161 L. Ed. 2d 669 (2005). In  
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**CERTIFICATE OF SERVICE**

I certify that on the date listed below, I served by United States Mail, first-class postage, one copy of this Motion to Stay and Abey Personal Restraint Petition on the following:

Ms. Anne Cruser, Deputy Prosecuting Attorney  
Office of the Clark County Prosecuting Attorney, Appellate Division  
1013 Franklin Center  
P.O. Box 5000  
Vancouver WA 98666-5000

Mr. Lester Juan Griffin, #838731  
H5-B108  
Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, WA 98520

\_\_\_\_\_  
Date and Place  
Cynthia S. Fester

## APPENDIX D



## Washington State Court of Appeals Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454

David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, Issue Summaries, and General Information at <http://www.courts.wa.gov/courts>

December 16, 2011

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CASE #: 42012-1-II

Personal Restraint Petition of: Lester Juan Griffin, Jr.

Counsel:

On the above date, this court entered the following notation ruling:

### **A RULING SIGNED BY COMMISSIONER SCHMIDT:**

Petitioner has moved to file an amended personal restraint petition and to stay this matter pending further DNA testing. Petitioner's motion to amend his petition is granted and his supplemental petition is accepted for filing. Petitioner's original petition will be placed in the file without action. Petitioner's motion to stay this petition pending the outcome of his request for post-conviction DNA testing is also granted and the pending response is no longer due. Petitioner must notify this court when the DNA testing issues have been resolved and move to file any further supplemental pleadings at that time. This court will then determine if any response is required. Petitioner should be aware, however, that any additional supplemental petitions will also be subject to the one year time bar stated in RCW 10.73.090. See *In re Benn*, 134 Wn.2d 868, 938-39 (1998).

Very truly yours,

A handwritten signature in black ink, appearing to read "David Ponzoha", is written over a horizontal line.

David C. Ponzoha  
Court Clerk

**CLARK COUNTY PROSECUTOR**  
**December 13, 2012 - 11:16 AM**

**Transmittal Letter**

Document Uploaded: prp2-420121-Response.PDF

Case Name: In re PRP of Lester Griffin

Court of Appeals Case Number: 42012-1

**Is this a Personal Restraint Petition?** ☒ Yes ☐ No

**The document being Filed is:**

- ☐ Designation of Clerk's Papers ☐ Supplemental Designation of Clerk's Papers
- ☐ Statement of Arrangements
- ☐ Motion: \_\_\_\_\_
- ☐ Answer/Reply to Motion: \_\_\_\_\_
- ☐ Brief: \_\_\_\_\_
- ☐ Statement of Additional Authorities
- ☐ Cost Bill
- ☐ Objection to Cost Bill
- ☐ Affidavit
- ☐ Letter
- ☐ Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_  
Hearing Date(s): \_\_\_\_\_
- ☐ Personal Restraint Petition (PRP)
- ☒ Response to Personal Restraint Petition
- ☐ Reply to Response to Personal Restraint Petition
- ☐ Petition for Review (PRV)
- ☐ Other: \_\_\_\_\_

**Comments:**

No Comments were entered.

Sender Name: Jennifer M Casey - Email: [jennifer.casey@clark.wa.gov](mailto:jennifer.casey@clark.wa.gov)

A copy of this document has been emailed to the following addresses:

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[ftorres@uw.edu](mailto:ftorres@uw.edu)